

**MINUTES FROM THE MEETING OF THE ST. CHARLES CITY COUNCIL
HELD ON TUESDAY, JANUARY 17, 2017 – 7:00 P.M.
CITY COUNCIL CHAMBERS, IN THE CITY COUNCIL CHAMBERS
2 E. MAIN STREET ST. CHARLES, IL 60174**

1. Call To Order By Mayor Raymond Rogina at 7:01 P.M.

2. Roll Call.

Present: Stellato, Silkaitis, Payleitner, Lemke, Turner,
Bancroft, Krieger, Gaugel, Bessner, Lewis

Absent: None

3. Invocation by Alder. Paylietner

4. Pledge of Allegiance.

5. Presentations

- Swearing in of Firefighter Andrew Kidd to the St. Charles Fire Department.
- Presentation of the 2016 Downtown St. Charles Partnership Electric Parade Winners:

Best of Show

St. Charles Fire Department

Non-Profit

1st Place – STCE Girls Basketball

2nd Place (3 way tie) – Bridges, Marquee Youth Stage,
St. Charles Swim Team

Business

1st Place – Fox River Harley Davidson

2nd Place – Inside Out

3rd Place – Blue Goose

Children's

1st Place – Cub Scout Pack #146

2nd Place – Elite Dance Academy

3rd Place – Cub Scout Pack #260

6. Motion by Krieger, seconded by Gaugel to approve the Omnibus Vote.

ROLL CALL VOTE: AYE: Stellato, Silkaitis, Payleitner, Lemke, Turner,
Bancroft, Krieger, Gaugel, Bessner, Lewis

NAY: 0 ABSENT:

MOTION CARRIED

***7. Motion by Krieger, seconded by Gaugel to accept and place on file minutes of the regular City Council meeting held January 3, 2017.**

ROLL CALL VOTE: AYE: Stellato, Silkaitis, Payleitner, Lemke, Turner,
Bancroft, Krieger, Gaugel, Bessner, Lewis

NAY: 0 ABSENT:

MOTION CARRIED (Omnibus Vote)

- *8. Motion by Krieger, seconded by Gaugel to approve and authorize issuance of vouchers from the Expenditure Approval List for the period of 12/19/2016– 1/1/2017 the amount of \$2,418,035.62.**

ROLL CALL VOTE: AYE: Stellato, Silkaitis, Payleitner, Lemke, Turner,
Bancroft, Krieger, Gaugel, Bessner, Lewis
NAY: 0 ABSENT:
MOTION CARRIED (Omnibus Vote)

I. New Business

- A. Motion by Lemke, seconded by Krieger to authorize the City Administrator to Execute a License Agreement with the Greater St. Charles Convention and Visitors Bureau (CVB).**

ROLL CALL VOTE: AYE: Stellato, Silkaitis, Payleitner, Lemke, Turner,
Bancroft, Krieger, Gaugel, Bessner, Lewis
NAY: 0 ABSENT:
MOTION CARRIED

- **Chris Minnick**

Attached is a proposed license agreement between the City and the CVB to allow the CVB to utilize office space within the City Hall Building. This is modeled after a similar agreement with the St. Charles Downtown Partnership. We would provide the use of that office space free of charge. As proposed the license agreement has a term from now and would expire April 30, 2019. This also mirrors agreement with the Downtown Partnership. The license agreement further provides for two individual two-year renewals. So, the option of both parties could be extended beyond 2019. The termination provisions that are in the agreement as proposed, allow for termination for cause or breach of agreement. They also either party to cancel the agreement with six months' worth of notice for any reason. What we are seeking tonight is approval to execute the license agreement.

II. Committee Reports

A. Government Operations

- *1. Motion by Krieger, seconded by Gaugel to approve a Resolution 2017-1 Abating a Portion of the Tax Heretofore Levied for the City of St. Charles, Kane, and DuPage Counties, Illinois.**

ROLL CALL VOTE: AYE: Stellato, Silkaitis, Payleitner, Lemke, Turner,
Bancroft, Krieger, Gaugel, Bessner, Lewis
NAY: 0 ABSENT:
MOTION CARRIED (Omnibus Vote)

- *2. Motion by Krieger, seconded by Gaugel to approve the purchase of a Ferno INX Inline Cot and Inline Fastener System as approved by the Tri City Ambulance Board.**

ROLL CALL VOTE: AYE: Stellato, Silkaitis, Payleitner, Lemke, Turner,
Bancroft, Krieger, Gaugel, Bessner, Lewis
NAY: 0 ABSENT:
MOTION CARRIED (Omnibus Vote)

- *3. Motion by Krieger, seconded by Gaugel to approve an Ordinance 2016-M-1 Authorizing the Disposal of Surplus Personal Property Owned by the Tri City Ambulance Association.**

ROLL CALL VOTE: AYE: Stellato, Silkaitis, Payleitner, Lemke, Turner,
Bancroft, Krieger, Gaugel, Bessner, Lewis
NAY: 0 ABSENT:

MOTION CARRIED (Omnibus Vote)

- *4. Motion by Krieger, seconded by Gaugel to approve and accept minutes of the January 3, 2017 Government Operations Committee meeting.

ROLL CALL VOTE: AYE: Stellato, Silkaitis, Payleitner, Lemke, Turner,
Bancroft, Krieger, Gaugel, Bessner, Lewis

NAY: 0 ABSENT:

MOTION CARRIED (Omnibus Vote)

B. Government Services

- C. Motion by Payleitner, seconded by Lemke to approve a **Resolution 2016-2** Authorizing the Mayor and City Clerk of the City of St. Charles to approve the Release of the Interest of the City of St. Charles in the Walkway Easement in Fox Glade P.U.D. Subdivision, Unit 1 *as amended* that the City only remove the west walkway (between lots 5 and 6, from Fox Glade Court to Fellows Street).
ROLL CALL VOTE: AYE: Stellato, Silkaitis, Payleitner, Lemke,

Krieger

NAY: Turner, Bancroft, Gaugel, Bessner ABSENT: 0

RECUSE: Lewis

MOTION CARRIED

Discussion:

The original motion was made by Turner, seconded by Gaugel:

Motion by Turner, seconded by Gaugel to approve a **Resolution 2016-2** Authorizing the Mayor and City Clerk of the City of St. Charles to approve the Release of the Interest of the City of St. Charles in the Walkway Easement in Fox Glade P.U.D. Subdivision, Unit 1.

Mayor Rogina

First a couple of definitions. We are talking about a west walkway that would extend from Fellows Street to Fox Lake Court. And an east walkway that goes from Fox Lake Court to the Oakes Subdivision. I came before the committee and suggested a compromise. Given the fact that in the executive summary, that Director Suhr has given you. I made the proposal that the west walkway, the testimony that I listened to from citizens. This is the Mayor speaking; I am not speaking for any Council member. The testimony reflected the fact that there is quite a bit of 'nuisance' on the west walkway. Then I think most of the Council visited the site, I did. And I would concede that the walkway butts into Mr. Vanaker, property. I observed all of that. I also know that the east walkway, I did not hear as much about that and nuisances there. I do understand that is a critical walkway from the Oaks to Fox Lake Court and points west in the neighborhood. I came before the body and suggested a compromise of closing the west walkway and keeping the east walkway option. That night the vote was 5-4 as you recall to close both walkways which is in this original motion. In the interim, you have received a legal opinion about the situation which you have in your packet. In particular attention, is the conversation about a prescriptive easement developing over a course of years and what may rise from a prescriptive easement. So I assume you read that and I think that it is a very important passage.

I know I received some calls from individuals about this. If anyone thinks that there is credence to that compromise in between, then you can put that forth in the form of an amendment.

Alder Payleitner

Proposed an amendment to the motion.

Motion by Payleitner, seconded by Lemke to approve a **Resolution 2016-2** Authorizing the Mayor and City Clerk of the City of St. Charles to approve the Release of the Interest of the City of St. Charles in the

Walkway Easement in Fox Glade P.U.D. Subdivision, Unit 1 as amended that the City only remove the west walkway (between lots 5 and 6, from Fox Glade Court to Fellows Street).

Mayor Rogina

We got an amendment that amends the main motion. In the spirit of transparency, we can entertain comments from the audience. But first the Council. We will be voting on the amendment first.

Alder. Turner

I think the compromise is inherently unstable because what happens in the future the east gateway home owners say; we want what you gave to the west gateway owners. You can't give it to one and not the other. I am looking forward here. I think this is going to come back.

Mayor Rogina

Do you recognize a difference of the two walk ways from a walkway's sheer presence to a particular home? The east walkway is protected by two large fences. The west walkway is not. You can stick your hand out the window and touch someone. In my mind, there is a distinct difference between the two walkways. And, this is me talking, the people that travail those walkways. I see your point, but in the spirit of debate, I raise this as a counterpoint.

Alder. Turner

As a counterpoint, we all know what an easement is. These people all know what an easement is. But they should not accept or expect the municipality to put a public walkway on what is essentially their private property. Which I don't think is right. My take on this is that the documents are somewhat unclear. I feel that my concept of a resident's right to privacy and his property rights, should take precedence when you are in a situation where there is real no solid footing that you can drill down to. I would rather err on the side of the property rights and privacy rather than on the side of government.

Mayor Rogina

Does the fact that this walkway has been used for so many years have any impact on your thinking? It has been used, up until now, without any protest.

Alder. Turner

That is a very valid point. I going with, why has it been put in there, should it have been put in there, and the early conversations that went like, we have the east walkway and a west walkway so we can use both to get to the Fellows to get to the school to get to the City's grid system. So, if you are taking out the west walkway, you negate all that. Now you are just going to Fox Glade. What is the difference of going to Fox Glade and going out to the other road? You are still stuck.

Mayor

The individuals can go from Fox Glade to Roosevelt and around. To me there is some connectivity there.

Alder. Turner

Or they can just go to Roosevelt to begin with.

Mayor Rogina

Right. You support closing them both.

Alder. Turner

Yes I do.

Alder. Payleitner

Understanding Alderman Turner's point, I changed my opinion of this after reading Mr. McGuirk's letter. I took away as this is a civil issue. That maybe the parties need to hire their own attorneys to work it out and then we will abide by the court's judgment.

Alder. Turner

I talked to Mr. McGuirk before this and that is true. Even though we don't have an interest in these walkways anymore that doesn't negate the using of these walkways. It's just our interest is out.

Mayor Rogina

I am correct to assume, I recall in committee, you are advocating both open under the theory that it is a civil issue and the parties should settle it themselves.

Alder. Payleitner

Right. It is a compromise for me.

Mayor Rogina

You said that in the amendment in the spirit of compromise.

Alder. Payleitner

Yes

Alder. Bancroft

The word that you are using is compromise. What is being done here is not compromise. What is being done here is a negotiation among the Council to make a decision. If it's a compromise, it would be a compromise over there, which I would be willing to live with. And they are not compromising so they are asking us for a decision. I am going to vote no on the amendment, I see no reason to go with the amendment.

Alder. Gaugel

I would agree with Alderman Bancroft. I truly appreciate the spirit of compromise but it's not our compromise to make. We asked last time for petitions to be signed. Alder. Bessner asked for that. From the residents of Fox Glade and they came back with the exception of two houses that wanted to stay out of it and one who couldn't be reached. But the houses that bought those properties are all in an agreement that they would like it closed. To me, it solidified my opinion, along with new evidence presented tonight, that I will not be in favor of the amendment.

Alder. Bessner

I would like to add, I did ask for from participation from all the residents of Fox Glade subdivision or neighborhood, because we were treating these as two different subdivisions, and they came with those petitions signed. Furthermore, I see this as a whole subdivision not two houses and their walkway being removed and two houses and their walkway remaining open. It goes back to Alderman Turner's point. If we have to vote tonight, I will be not in favor of the amendment.

Alder. Stellato

Very interesting discussion. Last time I was in favor of closing both walkways off. I have a lot of respect for our City Attorney, read his document. And I did feel that a compromise is in order. So, I am in favor of a compromise. I think I am willing to close off the Fellows Street walkway. Only because I do treat them as two different walkways. I look at Fellows street as a dead end street that seemed to want to be extended at some point in time and homes were built in its path so it was never extended. So a make shift walkway was built. The Oakes is more of an access issue. So I do look at these two differently, so I am willing to compromise. On the West side, close that off, protect Mr. Vanaker's house, and keep the east side open.

Mayor Rogina

I commend the Council. All comments are valid and to the point. I am proud of City Staff in trying to work out a sticky situation.

Frank Esposito, 64 White Oak Circle

I have been before you before. I am president of the Oaks Homeowners Association. The Staff did a tremendous job. I would like to see if we can add in the fact that we have presented a petition of our own. We had 66 out of our 75 homeowners ask that the walkways, both of them, be left open. That's 88% of our homeowner feel those walkways, unfortunately are on private property, but they have been in use for 46 years should come into play on this. I have at least one family that have children that go to Davis School. And the weather is nice, they walk through the walkways to get to school and back. The Oaks is developing into a property where younger families are coming in. As we get more younger families in, there is going to be more situations of kids going to the school. Also I am told that the closest bus stop is

at Fox Glade Court and Roosevelt street. Not unless we get the bus stop added to the entrance of the Oaks, the kids will now have to walk out of the Oaks, along Roosevelt Street and up to Fox Glade Court. Which, in my estimation may be the same length, but it's not as safe as going through the walkways because of the traffic on Roosevelt Street. I hope you give the amendment consideration. It is not the best thing that the Oaks would like, but we are willing to accept this amendment and go along with it. Mr. McGuirk's letter indicated that other parties may have rights to the easement and we talked to our attorney and he is in the process of seeing what possibilities we have if the City moves ahead and closes both or one of the sidewalks. The best thing is the fact that it has been over 40 years that it has been in use. Why is it different now? Maybe the City should do something to move that walkway next to his house a little further south. That might be some of the problem with his house. Our attorney said we should mention the fact that we feel as though it is a safety issue. If something happens to the entrance of White Oaks Circle, if there is a car accident out there, or gas line break, where the entrance is totally unusable. That has not happened in 40 years, but you never know. That walkway is the only safe way out of the complex. The only safe way for emergency personnel to get in. It goes both ways, it's another way for Fox Glade Court to get out. We hope that you will at least go for the amendment.

Mayor Rogina

I think both sides have clearly articulated their positions on the matter. I agree with Alderman Bancroft on his comment that the Council is negotiating with themselves on a compromise because there couldn't be a compromise resolved among all the players/residents. He is right on that point.

Phil Vanaker, 1227 Fox Glade Court

Just wanted to clarify a few things. When Frank said, kids cut through to Fox Glade Court to get on the bus. They don't get on the bus at Fox Glade Court; they get on at Roosevelt Street. Two of my neighbor's kids take that bus everyday bus both ways. The bus picks up at the end of Fox Glade Court across the street on Roosevelt. They could easily stop at the entrance of the Oaks. There is no one to pick up at the Oaks, that's why. A couple kids do cut through sometimes on Fox Glade Court. It is actually closer to walk through the Oaks to Roosevelt Street, I have mapped it out. As far as moving the easement south, Mr. McGuirk and Mark stop me if I am wrong; the easement was established in 1969 and is 20 feet wide. My house was built on the easement in 1970. In 1971 they said oops we messed up. I don't know if it was a building inspector or what but they let the house be built on the easement four feet so they moved the easement south four feet. They moved it and that was that. And there was no house on that lot, south. In 1975 there was a house built on that south lot on 4 feet of the easement. Twice houses were built. The easement is supposed to be 20 feet wide; it is 16.5 feet between the two houses.

John Thornhill, 44 White Oaks Circle

I am a resident of the Oaks and am familiar with this issue. We had a meeting with Pete Suhr from public works a couple months ago, and our goal at the meeting was to reach a compromise. We brought up the possibility of reconfiguring the walkway and the neighbors that have the easement on their property wouldn't hear of it. Their only compromise was to close the walkway and eliminate the easement. We felt that the preponderance of evidence on the history of this would prevail and there would be no question that the walkway should continue. It's important to the Oaks. The history of it illustrates clearly is it was established for the Oaks property. Six years after it was created, the Oaks (Fox Glade?) was developed. And we have been using that walkway ever since. We have an older population as Frank mentioned. Many people walk from the property westward into the rest of the community. When the easement was created, it was in fulfillment of the ordinance that still exists today that promoted the connectivity of the communities. And that's exactly what the still does today. When the Alder. Bessner requested some indication of support of closing it from Fox Glade people, I question as to why is that significance. Because the only people who have an interest in it are the four people that own the lots. The other people don't have interest whatsoever, unless they use the walkway and if that's the case then why would they want to close it. On the materials attached to the agenda, it should the parties that were

in support of closing the walkway, if the Oaks had been shown and the support for keeping it open, the map would be twice as big. I don't quite see the fairness ignoring 66 people that actually use it in comparison to four or five who want it closed. We are not at odds with the people in Fox Glade. We know them very well. Many are good friends. This walkway is a valuable attribute to the Oaks and we would hate to see it taken away from us. I would recommend that it be sent back to the Staff because a month ago we prepared a sketch of how the walkway could be reconfigured within the 18 foot space between the two houses on the west portion. If the walkway easement was reduced to about eight feet with a surface of four feet or three feet, it would get through that pinch point very well, provide access to everyone that would need it and be respectful of everyone's interest. I think if \$10,000 is allocated to eliminate it. It shouldn't cost more than that to relocate it. That would be my recommendation.

Mayor Rogina

I assume that the \$10,000 is the City's money? It is.

Alder. Silkaitis

I walked that path. Between the east side path and west side there is a big difference between the gap in the houses. If I was living at 1227 or 1309, it's ridiculous to live that close. I don't see how you can reconfigure anything to make it better. You would have to move the houses to make it work. That's not going to happen. I have no problem closing the west side. People on the east side seem to like that path. We have been talking about this for months trying to come up with a compromise and nothing has happened. We are done discussing. In my opinion, it has been dragging on too long. It's time to close the west and leave the east open, if that's what the people want.

Alderman Gaugel

One point of clarification, in regards to the four houses were the only ones on Fox Glad that had an interest. I recall there was testimony in one of the previous meetings about people who park on Fox Glade to get into the Oaks. I recall that was a concern of Fox Glade. This is why it is important that the petition is signed by the majority of the people who live on that street.

Alderman Bessner

Going back to the reference of why it made sense to ask for everybody in the Fox Glade neighborhood to sign that petition is because we (referring to Alderman Bancroft's comment) are forced into a position to decide what's going to happen. I am not willing to decide to close the sidewalk for two houses in the Fox Glade subdivision but 15 out of 17 houses input has made it easier for me to make a decision.

Alderman Payleitner

We cannot eliminate the easement, it will still be there?

Attorney McGuirk

Right. The easement remains on the plat. We can release our interests whatever they may be.

Alderman Stellato

We can physically take out the sidewalk?

Attorney McGuirk

We take out the sidewalk and we release our indemnity agreements.

Mayor Rogina

Thanks for all the input. The amendment on the table is to close the west walkway and keep the east walkway open.

D. Planning and Development

- *1. Motion by Krieger, seconded by Gaugel to approve and execute an Acceptance Resolution for Public Sanitary Sewer Located at 2425 W. Main Street (Buona).

ROLL CALL VOTE: AYE: Stellato, Silkaitis, Payleitner, Lemke, Turner,
Bancroft, Krieger, Gaugel, Bessner, Lewis

NAY: 0 ABSENT:
MOTION CARRIED (Omnibus Vote)

E. No Executive Session

9. Additional Items from Mayor, Council, Staff, or Citizens

Mayor Rogina shared the following:

- Happy birthdays to Alder. Turner, Alder. Lewis, and Alder. Payleitner
- In the Travel Magazine Illinois, on page 54 it showed an advertisement for a Fox Valley Cooperative cycling event. St. Charles is right in the middle of the 65-mile route. We are working with other cities. This will also be run in Midwest Living.
- Today, Chris Minnick, Mark Koenen and I met with Rep. Steve Anderson to talk about a variety of issues. In particular the lag of paying to the City of State Income Tax reimbursement. We don't have a clear answer. It was a good meeting. We are trying to fight for St. Charles interests.
- Alder. Stellato was part of a panel of the Economic Forecast Lunch. Commend Alder. Stellato and made our City and Council proud for representing the City so well.
- Senator McConnaughay invited the Mayor and Mark Koenen to sit in the chamber to hear the Governor's State of the State address.

10. Adjournment

Motion by Bessner, seconded by Krieger, to adjourn meeting

VOICE VOTE

UNANIMOUS

MOTION CARRIED

Meeting adjourned at 7:55 P.M.

Nancy Garrison, City Clerk

CERTIFIED TO BE A TRUE COPY OF ORIGINAL

Nancy Garrison, City Clerk